

In re National Prescription Opiate Litigation: MDL 2804 – Track Three
Summary Sheet of Concise Issues Raised

Motion: Defendants’ Motion to Exclude the Opinions and Testimony of Craig McCann

Description of the Issue: Should this Court exclude the opinions and testimony of Craig McCann?

Answer: Yes, McCann’s distribution opinions should be excluded for the same reasons briefed in Track 1. In addition, McCann’s new dispensing opinions should be excluded because (1) they are dependent on the inadmissible opinions of Plaintiffs’ pharmacy expert Carmen Catizone and (2) they are arbitrary and unreliable and do not fit the facts at issue in the case.

McCann offers no opinions about the validity of the “red flags” he was given by Plaintiffs’ counsel to conduct his dispensing analyses. By his own admission, he operates as a sort of “human calculator,” relying on Catizone to connect his flagged dispensing transactions to Plaintiffs’ allegations that Defendants improperly filled prescriptions in the Track Three counties. But Catizone’s opinions and testimony are excludable for the reasons stated in Defendants’ separate motion. Without Catizone to connect his analyses to relevant conduct, McCann’s opinions are entirely unreliable, disconnected from the facts at issue, and should be excluded.

Even if Catizone’s reports and testimony are not excluded, the Court should still exclude McCann’s dispensing opinions because the flagged prescriptions in his operative report are inherently arbitrary and unreliable. Simply put, the numbers McCann intends to present at trial do not reflect the actual universe of prescriptions that Catizone (or any other expert) says were improper or should have been flagged. Instead, they reflect Plaintiffs’ decision—in a last-ditch attempt to avoid the consequence of their untimely disclosure of a new set of “red flag” criteria—to rely at trial on “overlapping” prescriptions (*i.e.*, prescriptions that hit on *both* the old and new sets of criteria). Catizone has validated only one of those sets of “red flag” criteria, however. No expert has validated the other set. The resulting “compilation” numbers are certainly not the product of reliable principles or methods and do not fit any fact at issue in this case.

Prior Briefing and Opinions: The prior briefing on this issue is located at ECF Nos. 1903, 1906, 2112, 2260, 2262, 2263, 2264, 2442, and 2534. This Court’s opinion is located at ECF No. 2494.